UNITED NATIONS

General Assembly

FORTY-SEVENTH SESSION

Official Records

FIFTH COMMITTEE
70th meeting
held on
Wednesday, 25 August 1993
at 10 a.m.
New York

SUMMARY RECORD OF THE 70th MEETING

Chairman: Ms. ROTHEISER (Austria)
(Vice-Chairman)

Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. MSELLE

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Distr. GENERAL
A/C.5/47/SR.70
19 October 1993

ORIGINAL: ENGLISH

93-81214 (E)

In the absence of Mr. Dinu (Romania), Ms. Rotheiser (Austria), Vice-Chairman took the Chair.

The meeting was called to order at 10.40 a.m.

AGENDA ITEM 124: ADMINISTRATIVE AND BUDGETARY ASPECTS OF THE FINANCING OF THE UNITED NATIONS PEACE-KEEPING OPERATIONS (continued)

Open-ended working group on the placement of Member States into the groups for the apportionment of peace-keeping expenses called for under section II of General Assembly resolution 47/218

1. Mr. OSELLA (Argentina), Rapporteur, read out a statement submitted by Mr. Kabir (Bangladesh), coordinator of the open-ended working group on the placement of Member States into the groups for the apportionment of peace-keeping expenses called for under section II of General Assembly resolution 47/218. The group had held a series of informal and informal-informal meetings. A broad range of delegations had been represented at open and frank discussions. During the discussions, delegations indicated their belief that General Assembly resolution 47/218 (II) was appropriate and timely in view of the spectacular expansion of peace-keeping operations in the past two years. While they were convinced of the need to replace the existing ad hoc system with a better one, differing interpretations of resolution 47/218 (II), prevented them from reaching a consensus on the terms of reference of the working group. As a result, no substantive progress had been achieved. In view of the importance of the question, it was felt that it should be considered by the General Assembly at its forty-eighth session.

2. Mr. DAMICO (Brazil) stressed the need to find the correct mix between flexibility and control and accountability in the currently overstrained United Nations peace-keeping administrative structure. Rather than making hasty changes, a stable and thereby reliable structure should be sought. His delegation fully agreed with the statement by the Chairman of the Advisory Committee on the need to rethink the procedures for reporting the costs of peace-keeping operations. Reports must be simplified, clearer and less frequent if the General Assembly was to fulfil its responsibilities in the review of administrative and financial matters.

3. His delegation was not convinced, however, that the introduction of an annual budget for all peace-keeping operations would solve the cashflow problems. It might be useful to draw up annual budgets for certain operations, such as the United Nations Disengagement Observer Force (UNDOF) and the United Nations Interim Force in Lebanon (UNIFIL), whose mandates and strength had not changed substantially in several years. In general, however, peace-keeping operations were ad hoc activities, subject to unforeseen political developments and their budgets were erratic. Nor would it be advisable to depart from the current practice of assessing Member States only after the necessary decision had been taken by the Security Council on the extension of peace-keeping mandates.

4. His delegation also supported the Advisory Committee's suggestions on expanding the use of volunteers and on requesting greater firmness from the

(Mr. Damico, Brazil)

Secretariat during the negotiation of status-of-forces agreements with host countries in order to achieve savings on premises and accommodation for the staff. Improved management of staff assignments to peace-keeping operations should also result in regular budget savings. The liquidation of assets on completion of a peace-keeping operation and the transfer of those assets to other operations would become increasingly relevant with the termination of the United Nations Transitional Authority in Cambodia (UNTAC). Concerning the procurement of goods and services, strict transparency and accountability in the bidding processes was vital in view of the considerable resources involved. The participation of contractors from developing countries should be increased.

5. His delegation fully shared the views of the Indian, Chinese and Pakistani delegations regarding international contractual personnel. The United Nations should not, in the name of cost-effectiveness, sacrifice the principle of non-discrimination on the grounds of nationality, race or gender. The principle of equal pay for equal work must also be upheld. In that connection, standards for death and disability benefits for troops must be promptly established.

6. The CHAIRMAN suggested that the Committee should resume consideration of the question of the placement of Member States into the groups for the apportionment of peace-keeping expenses at the forty-eighth session, when it took up the item entitled "Administrative and budgetary aspects of the financing of the United Nations peace-keeping operations".

7. It was so decided.

AGENDA ITEM 155: FINANCING OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA (A/47/980 and 1002)

8. Mr. MSELLE (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the report of the Advisory Committee in document A/47/980, said that the report informed the General Assembly that the Advisory Committee had received a request from the Secretary-General for authorization under the terms of General Assembly resolution 46/187 to enter into commitments not exceeding $1,568,500, to provide for the requirements of the Tribunal in 1993. In paragraph 2 of the report, the Advisory Committee noted from Article 32 of the Statute of the International Tribunal that its expenses "shall be borne by the regular budget of the United Nations in accordance with Article 17 of the Charter of the United Nations". Article 13, paragraph 4, of the Statute, which had been adopted under Security Council resolution 827 (1993), provided that the terms and conditions of service of the judges should be those of the judges of the International Court of Justice.

9. In paragraph 3 of its report, the Advisory Committee noted that the General Assembly had not yet taken a decision on the nature of financing of the International Tribunal. It had therefore requested the Secretary-General to submit a report on the requirements of the Tribunal to the General Assembly at its forty-eighth session. That report should include the information requested by the Advisory Committee in its report, including information on the outcome of the Secretary-General's discussions with the Government of the Netherlands concerning the headquarters of the Tribunal.

(Mr. Mselle)

10. The note by the Secretariat (A/47/1002) had not been available when the Advisory Committee considered the Secretary-General's request to commit funds for the initial activities of the Tribunal in 1993. On the basis of the report of the Advisory Committee (A/47/980) and the note by the Secretariat (A/47/1002), the Fifth Committee would be able to take the decisions which the Secretary-General was requested to take into account in his report to the General Assembly at its forty-eighth session containing the budget estimates for the Tribunal from 1994 onwards. Pending the submission of that report, the Advisory Committee had granted the Secretary-General authority to enter into commitments in an amount not exceeding $500,000 to provide for the immediate and urgent requirements of the Tribunal for its initial activities under the conditions specified in paragraph 5 of document A/47/980.

11. Mr. MADDENS (Belgium), speaking on behalf of the European Community, said that, in view of the very recent distribution of the documents under consideration, the member States of the European Community wished to reserve the right to express their position on the matter at a subsequent meeting.

12. Mr. RAE (India) said that, while fully supporting the establishment of the International Tribunal, he, nevertheless, had a number of difficulties with regard to the manner in which the matter had been handled by the Secretariat. Under Article 17 of the Charter, the expenses of the Organization should be borne by the Members as apportioned by the General Assembly. Article 32 of the Statute of the International Tribunal, however, stated that the expenses of the Tribunal "shall be borne by the regular budget of the United Nations". In paragraph 7 of document A/47/1002, the Secretariat tried to give some justification for including the financial arrangements for the International Tribunal in the Statute, but his delegation did not find the argument very convincing. It would have been more appropriate for the Secretariat to advise the Security Council of the General Assembly's decision-making authority with regard to financial issues. Furthermore, the usual practice of providing indicative estimates of the total costs involved had not been followed. The Secretariat should inform the Fifth Committee why such estimates had not been provided and whether it had been absolutely necessary to include Article 32 in the Statute.

13. The General Assembly might not necessarily take the same decision as the Security Council with regard to the financing of the Tribunal. Such a situation would be most undesirable. He wondered whether that possibility had occurred to the Secretariat and whether it was seeking to present the General Assembly with a fait accompli.

14. Another question for consideration was the nature of financing of the Tribunal and the type of assessment to be applied. Paragraph 10 of document A/47/1002 stated that, while the International Tribunal had been established by the Security Council acting under Chapter VII as a measure to maintain and restore international peace and security, the Tribunal was not thereby to be equated to a peace-keeping operation. There again, his delegation had great difficulty following the logic. Certain decisions by the Security Council related to the maintenance of international peace and security without involving peace-keeping operations. The Member States should discuss how the Tribunal should be financed, and it was wrong for the Secretariat to prejudge that important issue.

(Mr. Rae, India)

15. A precedent could be found in Security Council resolution 687 (1991), which provided a mandate for several bodies and activities with financial implications relating to the maintenance of international peace and security without constituting peace-keeping operations. That resolution had established a Special Commission to administer a fund to pay compensation for claims for damage as a result of Iraq's invasion and occupation of Kuwait. At the time, the Secretary-General had submitted a report to the Fifth Committee on the nature of financing of the activities involved, which were for the maintenance of international peace and security, and proposed that the peace-keeping scale be applied. The General Assembly, however, had never discussed the question because an alternative financing arrangement had subsequently been found. Accordingly, his delegation was somewhat surprised to read in paragraph 11 of document A/47/1002 that the Secretary-General had decided to propose an article for inclusion in the Statute providing that the expenses of the Tribunal should be borne by the regular budget of the Organization. Given the precedent in Security Council resolution 687 (1991) and the fact that the Tribunal came under Chapter VII of the Charter and was meant to promote the maintenance of international peace and security, his delegation felt that the Tribunal should be financed on the basis of the peace-keeping scale, not the regular budget of the Organization. India could not accept the Secretary-General's suggestions and regretted the way in which the matter had been dealt with by the Secretariat.

16. Mr. DAMICO (Brazil) recalled that his delegation had voted in favour of Security Council resolution 827 (1993) recognizing that the exceptionally grave situation in the former Yugoslavia might demand exceptional action. However, intricate and not unimportant legal difficulties in connection with the establishment of the Tribunal had not been resolved to his country's satisfaction. It would have been appropriate for the matter to be brought before the General Assembly as well.

17. His delegation took note of document A/47/1002. It would have preferred more standard language concerning the financing of the Tribunal, such as "the expenditures of the Tribunal would be borne by Member States in accordance with Article 17 of the Charter". That would have preserved the competence and responsibilities of the General Assembly and, at the same time, ensured a sound financial basis for the establishment of the Tribunal. A decision on the nature of the financing of the International Tribunal should be taken by the General Assembly, for it would reaffirm the Assembly's prerogatives in administrative and financial matters.

18. Mr. DUHALT (Mexico) said that his delegation also supported the establishment of the International Tribunal but shared the concerns expressed by the Indian representative. It would be important to know the legal basis for the Security Council decision reflected in Article 32 of the Statute of the Tribunal. Article 32 referred to Article 17 of the Charter, under which the General Assembly had sole authority to adopt budgets and decide on the apportionment of expenses among Member States. Unless a resolution had been adopted in the interim conferring similar powers on the Security Council, the Statute contained a glaring contradiction.

19. His delegation also wished to know the Secretariat's justification for proposing that the Tribunal's expenses should be borne by the regular budget of

(Mr. Duhalt, Mexico)

the United Nations. That seemed to contradict paragraph 10 of the note by the Secretariat (A/47/1002), which stated that the Tribunal was established under Chapter VII of the Charter of the United Nations as a measure to maintain and restore international peace and security and described it as a subsidiary organ of the Security Council. Since international peace and security was the mandate of the Security Council, neither the regular budget of the Organization nor the General Assembly came into play. Rather, the apportionment of the financial costs should take into account the special prerogatives of the Security Council, and especially those of the five permanent members.

20. Mr. CLAVIJO (Colombia) said his delegation also believed that the establishment of the International Tribunal was fully justified. However, like others, it wondered about the validity of the recommendation contained in document A/47/1002, paragraph 12. It was not the first time that questions had arisen as to whether a Security Council decision had remained within the Organization's legal framework. One sentence of the paragraph, in particular, seemed to be a contradiction in terms, namely that "there was no legal bar to the Security Council reaching its own conclusions as to the appropriate financing of the International Tribunal and including a provision on the matter in the Statute which it adopted". Clearly, the financing of the International Tribunal should be determined by the General Assembly. The Security Council had a political mandate but only the General Assembly was competent to define financial mechanisms. In that spirit, the Fifth Committee should send a message to the Security Council concerning the legal framework applicable in that case and in many others. That would ensure balance among the different bodies of the Organization. Obviously, a number of delegations believed that the note by the Secretariat (A/47/1002) created serious substantive problems. The Fifth Committee should therefore reaffirm the General Assembly's mandate to take decisions on financial matters.

The meeting rose at 11.40 a.m.